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GWA ARTICLES

Title: Improved protection for IP Rights in Sweden – implementation of IPRED

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Summary

Main news:

- Internet Service Providers and other parties in the distribution chain can be ordered to supply information on suspected infringements by way of a simplified court procedure.
- Compensation to be awarded for publication of court judgments.
- Specified criteria laid down for calculation of damages.
- Prohibitive injunctions and corrective measures now also applicable to attempted infringement and to conspiracy to commit infringement.

Intellectual Property Rights involved:

- Copyright
- Patents
- Designs
- Trade marks
- Trade names
- Integrated circuits
- Plant breeders' rights



IPRED and the Swedish implementation

The Swedish implementation of the Intellectual Property Rights Enforcement Directive (“IPRED”) came into effect on April 1, 2009.¹ The objective of this Directive is to achieve a high, as well as uniform, level of protection of intellectual property rights on the internal market, by means of harmonizing the Member States’ legislations concerning enforcement. The Directive contains basic provisions regarding measures, procedures and sanctions which have been deemed necessary for the protection of intellectual property rights.² As this is a so called “minimum requirement Directive”, the possibility exists for the Member States to prescribe additional sanctions and/or more severe measures beyond the basic level.

The Member States were obligated to implement IPRED as early as in 2006, but Sweden’s implementation was considerably delayed. As a consequence, Sweden might be held liable to pay damages to parties who, during the delay, were unable to exercise their rights under the Directive.

In most respects Swedish legislation already fulfilled the requirements of the Directive, but there are some areas where the Directive has brought significant changes.

The most important news due to the implementation is that IP right owners can now to ask the courts, by way of a simplified procedure, to order third parties to disclose information that facilitates the investigation of a suspected infringement and the identification of a suspected infringer. As soon as there is reasonable suspicion of an

¹ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights. For further information on the Swedish implementation, please refer to the preparatory works, Prop. 2008/09:67 and Ds. 2007:19.

² IPRED Article 1.



infringement, the rights owner now has a means to obtain the information needed to take effective legal action.

The entertainment industry has high hopes for this new weapon in the fight against the wide-spread problem of illicit file sharing. The arrival of IPRED was highly publicized and intensely debated in Sweden, the homeland of famous pioneer torrent tracker site The Pirate Bay. According to media reports, Internet traffic in general, and bit torrent downloading in particular, dropped dramatically on 1 April 2009.

There is reason to doubt, though, that IPRED will in fact prove to be that long-awaited magic bullet, especially in light of the recent announcement by several major Swedish ISPs that they will destroy all records of users' IP numbers. IPRED merely provides for an obligation to supply existing information, it creates no obligation to keep records. This gap may be filled shortly, with the belated Swedish implementation of yet another piece of EU legislation: the Data Retention Directive.³ However, the personal integrity issues involved are still the object of bitter political debate in Sweden, and the implementation may meet significant opposition yet.

We will no doubt have reason to return to the subject in the near future!

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³ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.